

Remarks

The claims were amended in accordance with the amendments above. The amendments to the claims are being made merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

§103 Rejections

Claims 1-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Carney et al. (6,408,278) in view of Peckover (7,319,976). Under MPEP 2143.03, in order to establish a *prima facie* case of obviousness, the Office must give due consideration to all of the limitations of a claim. The Office must also sufficiently establish a motivation to combine or modify the teachings of the prior art in order to reach a claimed invention in accordance with MPEP 2143.01. Obviousness rejections “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-97 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). For at least the reasons set forth below, Applicant respectfully submits that the combined art of record fails to render any of the present claims obvious.

Applicant submits that the art of record fails to teach or suggest all of the limitations recited in each independent claim in accordance with MPEP 2143.03. For instance, Applicant notes that amended independent claim 1 recites “wherein the unique product order number is further associated with the participating merchant responsible for fulfilling orders for the product associated with the unique product number.” Amended claim 1 further recites “means for matching each incoming order to the customer placing the order, the product ordered, and the participating merchant offering the product, wherein the unique product order number is used to match the incoming order to the product ordered and the participating merchant offering the product.” In the present Office Action, the Office pointed to Unique ID 188 described in Peckover as disclosing the unique product order number recited in amended claim 1 (See Office Action dated 03/11/2009, p. 3). Applicant respectfully points out that the unique ID 188 described in Peckover is associated only with a particular *advertisement*, and is not associated

with either the product and the merchant responsible for filling orders for the product, let alone both the product and merchant as recited in amended claim 1. Specifically, Peckover states: “A Unique ID component 188 uniquely identifies the *advertisement* within Agent System 10” (Col. 26, lines 57-58, emphasis added). Neither Carney nor Peckover, either alone or in combination, disclose a unique product order number that is associated with *both* a particular product and the merchant responsible for filling orders for that product. In addition, none of the prior art of record discloses a means for matching incoming orders to the product ordered and the responsible merchant, wherein the unique product order number is used to accomplish such matching. As discussed in the specification of the present application, the dual association of the unique product order number with both the product and the responsible merchant may provide an advantage over the prior art (See 2005/0289015, paragraph 101). Specifically, when combined with additional information, such as the customer’s location when the order is placed and the time of the order, the unique product order number can be used to provide the merchant associated with the unique product order number with near real time feedback regarding actual consumer responses prompted by a particular advertisement. *Id.* The above-noted limitations recited in amended claim 1, among others recited in amended claim 1, are thus neither taught nor suggested by the combined art of record. Applicant therefore submits that the combined art of record fails to teach or suggest all of the limitations of amended claim 1 in accordance with MPEP 2143.03. Accordingly, Applicant respectfully submits that the combined art of record fails to render present claim 1 obvious in accordance with MPEP 2143, and respectfully requests that the rejection be withdrawn.

Similarly, Applicant notes that independent claim 6 recites “wherein the unique product order number is further associated with the participating merchant responsible for fulfilling orders for the product associated with the unique product number.” As discussed above with regard to a similar limitation in amended claim 1, the prior art of record, either alone or in combination, fails to disclose this particular limitation of claim 6. Applicant therefore submits that the combined art of record fails to teach or suggest all of the limitations of claim 6 in accordance with MPEP 2143.03. Accordingly, Applicant respectfully submits that the combined art of record fails to render present claim 6 obvious in accordance with MPEP 2143, and respectfully requests that the rejection be withdrawn.

All limitations recited in a claim must be considered when determining the patentability of the claim against the prior art, even if the claim is also rejected under 35 U.S.C. §112. See MPEP 2143.03 and 2173.06. The Office failed to address every limitation recited in amended claim 6 as presented by Applicant in the previous response. Specifically, the Office failed to address the limitation recited in claim 6 regarding “wherein the unique product order number is further associated with the participating merchant responsible for fulfilling orders for the product associated with the unique product number” Therefore, Applicant has not been provided with a full and fair opportunity to respond to the rejection. As a result of the Office’s failure to address these limitations in the context of any rejection, any subsequent office action may not be made final. See MPEP 706.07(a). Applicant respectfully requests that the Office explicitly address each and every limitation recited in the claims, and explicitly address each and every argument made by Applicant herein, in any subsequent Office Action.

Applicant further notes that the dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for non-obviousness.

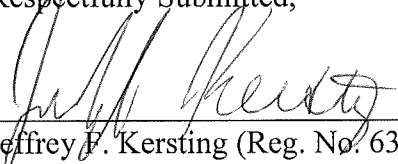
Conclusion

While several distinctions have been noted over the art of record, Applicant notes that there are several other limitations recited in the present claims which are neither taught nor suggested by the art of record. Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, to the extent that the amendments constitute a narrowing of the claims, such narrowing of the claims should not be construed as an admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. To the extent that any particular statement or argument by the Office in the pending Office Action has not been explicitly addressed herein, the same should not be construed as an acquiescence or admission by the Applicant that such statements or arguments by the Office are accurate or proper.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513) 651-6739 or via e-mail at jkersting@fbtlaw.com.

The Commissioner for Patents is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully Submitted,

 9/11/09

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